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Page	4
Date	AUGUST

## Comments/Special Instructions

Mr. Terreni,

Please find the attached comments which RealPage, d/b/a Velocity, respectfully requests be added to Docket No. 2007-228-G for consideration.

Best Regards,

Ryan P. Grogan, CIPP  
Compliance Manager, Legal  
RealPage, Inc.  
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August 22, 2008

Mr. Charles L.A. Terreni  
Chief Clerk / Administrator  
South Carolina Public Service Commission  
101 Executive Center Dr., Suite 100  
Columbia, SC 29210  
**VIA FACSIMILE**

Re: Docket No. 2007-228-G: Petition of the Office of Regulatory Staff Requesting Rule to Show Cause to Quail Pointe Apartments, 460 E Blackstock Road, Spartanburg, South Carolina 29301 as to Why Quail Pointe Apartments Should Not Be Regulated as a Public Utility

Dear Mr. Terreni,

RealPage, Inc. ("RealPage"), d/b/a Velocity, would like to provide the following comments regarding Docket No. 2007-228-G to the South Carolina Public Service Commission ("Commission") for consideration.

The Commission must be aware that Velocity is the contracted third-party billing provider for the Quail Pointe Apartments, and in this capacity, Velocity has great interest in the Docket, and further, is compelled to provide its comments with respect to the positions made by the Parties to this Docket.

#### **I. Overview**

Until recently, it was held that landlords who provided utility service to their tenants were devoting their sites to a public use, and should therefore be subject to regulation as a public utility. However, it has also been held that landlords who provide utility services to tenants as a mere incident to some other dominate service (i.e., renting), are not devoting their sites to a public use and should therefore not be subject to regulation as a public utility. Velocity, and the multifamily industry we serve, holds the latter to be a true and accurate reflection of the practice.

The Commission must be aware of the high costs of gas service that plague the nation today. It is the desire of Velocity to ensure that a landlord's ability to separately bill his or her tenants for gas service does not constitute an action which would subject him or her to regulation as a public utility.

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Furthermore, the Commission must be made aware that this matter was previously discussed in Docket No. 2001-485-W/S. While Docket No. 2001-485-W/S specifically addressed the matter of separately billing apartment tenants for water and sewer service, the findings in Order No. 2003-214 should also hold true for Docket No. 2007-228-G. Specifically, in Order No. 2003-214, the Commission found that “submeterers”, or for purposes of this Docket landlords, did not meet the definition of a “public utility” under the provisions of South Carolina law. The Commission found that merely providing a billing function did not make an entity a “public utility” for purposes of regulation by the Commission.

## **II. Discussion**

The Parties to Docket No. 2007-225-G contend that the Quail Pointe Apartments are engaged in the practice of “distributing” natural gas service at “unapproved” and “unregulated” rates and charges.

With respect to the contention that the Quail Pointe Apartments are “distributing” natural gas service to tenants, S.C. ST § 58-5-10(4) reads, in part, that a “public utility” includes any person delivering natural gas distributed or transported by pipe. The Quail Pointe Apartments does not deliver the commodity, but merely apportions the costs of the commodity which was delivered to the Quail Pointe Apartments by the regulated gas public utility through its system of piping.

To assert that the Quail Pointe Apartments is billing its tenants at “unapproved” and “unregulated” rates and charges is not an accurate reflection of its billing practices. First, and most importantly, for this allegation to hold true the Quail Pointe Apartments would have to be classified as a “public utility” under the provisions of South Carolina law. The Quail Pointe Apartments does not sell the gas commodity at “unapproved” or “unregulated” rates, but simply apportions the costs imposed by the regulated gas public utility to tenants of the community using a method of allocation recognized by other states.

While the Commission should consider its decision with respect to Docket No. 2001-485-W/S, it should also note that other states have recognized the practice utilized by the Quail Pointe Apartments, and have adopted guidelines by which to engage in the practice. Specifically, Arizona – as part of the Residential Landlord-Tenant Act (A.R.S. § 33-1314.01 et seq.) – permits the practice of apportioning natural gas costs to tenants using a method provided for by the Act. Furthermore, pursuant to A.R.S. § 33-1314.01(H), a landlords use of a method of apportioning

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utility costs was not a basis for regulating an apartment community as a public utility. As discussed previously, the Commission previously affirmed this position with respect to billing tenants for water and sewer service.

### **III. Conclusion**

While there are certainly other states which have recognized the practice of separately billing tenants for utility costs, the Commission must acknowledge that the practice of merely "passing through" and apportioning utility costs does not constitute an activity, or subject Quail Pointe Apartments, to regulation as a public utility as defined pursuant to S.C. ST § 58-5-10(4).

Again, Velocity urges the Commission to consider these comments prior to issuing a final ruling with respect to Docket No. 2007-228-G.

Respectfully,

Ryan P. Grogan, CIPP  
Compliance Manager

cc: Quail Pointe Apartments